THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.9446 of 2006

DATED: 28-04-2006

BETWEEN

C. Pujitha, daughter of Satyapal Reddy

and another

...PETITIONERS

AND

The Municipal Corporation of Hyderabad,

Represented by its Commissioner, Hyderabad.

...RESPONDENT

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THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.9446 of 2006

ORDER:

Petitioners filed the present writ petition seeking to issue a writ of mandamus declaring the notice dated 01.04.2006 in letter No.47/Tos/C3/MCH/2006002/TPs/C4/ MCH/2006 of the respondent as illegal and violative.

Heard the learned counsel appearing for the petitioners as well as the learned standing counsel appearing for the respondent.

It is the case of the petitioners that they jointly purchased the shop bearing

No.5 in premises bearing No.3-4416, situated in Hi-Line Pratap Towers, Lingampally, Hyderabad and the said shop is in Cellar and ear-marked for shopping purpose. It is further stated that the Municipal Corporation, Hyderabad granted permission for construction of the building vide permit No.461/66/95. The petitioners purchased the said shop by a registered sale deed dated 27.08.1999. It is further stated that the respondent issued
a notice in letter No.47/TPS/C3/MCH/2005, dated 01-04-2006 under Section 636 of Hyderabad Municipal Corporation Act, 1955, (for short 'the Act') stating that the petitioners have made constructions not covered by the sanction plan and converted the parking space in cellar floor other than parking and carried out the said construction which is unauthorized and causing lot of inconvenience to the inmates in the building and also to the visitors of the building, resulting in vehicles being parked on the road, creating lot of traffic congestion, accident and public nuisance. There is a suo-motto contempt case pending on the file of the High Court in C.C.No.101 of 1996, dated 28-2-1996. Accordingly, the petitioners were called upon to remove the said unauthorized structure within 24 hours. It is stated that pursuant to the said notice, the petitioners made a representation on 24.04.2006, stating that the shop purchased by them is not ear-marked for the parking and there is no inconvenience for any vehicles for parking in the parking area.

I am of the opinion that issuing notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 in respect of the buildings, which have been constructed after obtaining permission for construction of the cellar, ground floor and upper floors, the relevant provision to issue a notice is under Section 452 of the Act. It is for the respondent to point out whether the petitioners have converted the parking place into shop. If there is any deviation or conversion, it is for the respondents to issue a show cause notice under Section 452 of the Act. But, without issuing any show cause notice, straight away a notice under Section 636 of the Act as if the construction has been made without any permission has been issued, directing the petitioners to remove the structures.

Having regard to the facts and circumstances of the case, the impugned notice is directed to be treated as a show cause notice only, for which the petitioners have already filed
a representation dated 24.04.2006 and till the said representation is considered and appropriate orders are passed, the respondent may not remove or demolish the

shop bearing No.5 of the petitioners.

The writ petition is disposed of accordingly. No costs.

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V.ESWARAIAH, J

Date: 28-04-2006.

RNS